

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANKLIN LOVING,

Plaintiff,

-against-

JOHN AND JANE DOE, M.D.;
SUPERINTENDENT, DOWNSTATE
CORRECTIONAL FACILITY,

Defendants.

21-CV-0527 (CM)

ORDER

COLLEEN McMAHON, Chief United States District Judge:

On December 29, 2020, the Court received an application from Plaintiff Franklin Loving, asserting claims under 42 U.S.C. § 1983 in connection with his medical examination during the intake process when he arrived at Downstate Correctional Facility in January 2019. The Court opened that matter as a civil rights complaint under docket number 20-CV-11135. On January 5, 2021, the Court directed Plaintiff to pay the filing fees for that matter or submit an application to proceed *in forma pauperis* (IFP) and prisoner authorization, which the Court specified should be labeled with the docket number 20-CV-11135.

On January 11, 2021, Plaintiff returned the IFP application and prisoner authorization, which are stamped at the top with the docket number 20-CV-11135, together with a new complaint again asserting claims arising from Plaintiff's medical examination during the intake process at Downstate Correctional Facility in January 2019. These documents were opened as a new action under this docket number, 21-CV-0527.

It appears that Plaintiff submitted this IFP application and prisoner authorization form in response to the Court's January 5, 2021 order in 20-CV-11135. Moreover, because this complaint raises the same claims as the complaint in 20-CV-11135, no useful purpose would be served by

treating the complaint as a new action. The Court therefore directs the Clerk of Court to:

(1) refile the IFP application and prisoner authorization docketed in 21-CV-0527 (ECF Nos. 1, 3), in Plaintiff's pending action 20-CV-11135 (CM); (2) file the complaint from 21-CV-0527 (ECF No. 2) as an amended complaint in 20-CV-11135 (CM); and (3) administratively close this action (21-CV-0527).

Because it appears that this new action was opened in error, the Clerk of Court shall not charge Plaintiff the \$350.00 filing fee for this action (21-CV-0527), and the Superintendent having custody of Plaintiff shall not encumber funds from his trust account for this lawsuit.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. The Court further directs the Clerk of Court to: (1) refile the IFP application and prisoner authorization docketed in 21-CV-0527 (ECF Nos. 1, 3), in Plaintiff's pending action 20-CV-11135; (2) refile the complaint, 21-CV-0527 (ECF No. 2), as an amended complaint in 20-CV-11135; and (3) administratively close this action. A copy of this order shall also be docketed in 20-CV-11135 (CM), and all further documents related to this matter shall be filed under that docket number.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

Dated: January 28, 2021
New York, New York



COLLEEN McMAHON
Chief United States District Judge